

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In re Application of	)	
	)	
<b>Anabelle Savage, Chapter 7 Trustee, Universal</b>	)	NAL/Acct. No. MB-201041410009
<b>Broadcasting, Inc., Assignor, and Jireh Media,</b>	)	Facility ID No. 38456
<b>Inc., Assignee</b>	)	FRN 0018171942
	)	File No. BAL-20090728ADJ
For Assignment of License of Station KQLO(AM),	)	
Sun Valley, Nevada	)	

**MEMORANDUM OPINION AND ORDER  
AND  
NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: April 12, 2010**

**Released: April 13, 2010**

By the Chief, Audio Division, Media Bureau:

**I. INTRODUCTION**

1. We have before us the above-referenced application (the “Assignment Application”) seeking approval for the proposed assignment of the license of Station KQLO(AM) (“Station”), Sun Valley, Nevada, from Universal Broadcasting, Inc., Annabelle Savage, Trustee (“Savage”) to Jireh Media, Inc. (“Jireh”). On August 26, 2009, Steven Lewis (“Lewis”) filed a pleading captioned “Petition to Deny License Transfer for KQLO, Reno” (“Objection”).<sup>1</sup>

2. In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* (“NAL”) issued pursuant to Sections 309(e) and 503(b) of the Communications Act of 1934, as amended (the “Act”), and Section 1.80 of the Commission’s Rules (the “Rules”),<sup>2</sup> by the Chief, Audio Division, Media Bureau, by authority delegated under Section 0.283 of the Rules,<sup>3</sup> for the reasons stated below, we: (1) dismiss Lewis’ pleading as a petition to deny; (2) grant the pleading as an informal objection to

<sup>1</sup> On September 23, 2009, Savage and Jireh (collectively, “Applicants”) jointly filed an Opposition and, on October 19, 2009, Lewis filed a Reply. Applicants’ Opposition was late-filed. *See* 47 C.F.R. § 1.45(b) (“Oppositions to any motion, petition or request may be filed within 10 days after the original pleading is filed.”). Applicants sought additional time to file their Opposition in a motion filed on September 3, 2009, which Lewis opposed on September 11, 2009. We note that Lewis’ Reply also could be considered late-filed. *See* 47 C.F.R. § 1.45(c) (“The person who filed the original pleading may reply to oppositions within 5 days after the time for filing oppositions has expired.”). Lewis, however, did not request additional time to file his Reply. Regardless, in order to consider and resolve all issues in this decision, we grant Applicants’ motion, deny Lewis’ motion and accept the late-filed Opposition and Reply.

<sup>2</sup> 47 U.S.C. §§ 309(e), 503(b); 47 C.F.R. § 1.80.

<sup>3</sup> 47 C.F.R. § 0.283.

the extent discussed below and deny it in all other respects; (3) grant the Assignment Application; and (4) conclude that Savage is apparently liable for a monetary forfeiture in the amount of four thousand dollars (\$4,000) for unauthorized transfer of control in violation of Section 310 of the Act and Section 73.3540 of the Rules.<sup>4</sup>

## II. BACKGROUND

3. Annabelle Savage is the Trustee of Universal Broadcasting, Inc. (“Universal”), which is in Chapter 7 bankruptcy.<sup>5</sup> As such, she is licensee of the Station.<sup>6</sup> To liquidate Universal’s assets, Savage held an auction to identify a buyer for the Station and its equipment. The winning bidder was Ricardo Garcia (“Garcia”), part owner of Jireh. Savage and Jireh subsequently entered into a Local Programming and Marketing Agreement (“LMA”) and executed an Asset Purchase Agreement. Then, on July 28, 2009, they submitted the Assignment Application.

4. On August 26, 2009, Lewis filed his Objection. Lewis acknowledges that he has a private contractual dispute with Jireh. However, Lewis goes on to allege that an unauthorized transfer of control from Savage to Jireh has occurred, that Jireh does not comply with the limits on foreign ownership set forth in Section 310(b) of the Act, that there are numerous ongoing violations of the Rules concerning operation of an AM radio station, and that Garcia lacks the character qualifications required of a Commission licensee. For these reasons, Lewis seeks denial of the Assignment Application.

5. In response, Applicants explain the Station’s recent history, including Universal’s struggle to stay in business and eventual bankruptcy, Savage’s appointment as Chapter 7 Trustee and agreement to sell the Station to Jireh, Savage’s and Jireh’s lack of prior broadcast experience, and their combined efforts to return the Station to air despite it being off the air for approximately 11 months and despite the limited facilities with which they had to work.<sup>7</sup> Applicants assert that Lewis lacks standing to file a petition to deny and that his pleading is procedurally defective. Finally, Applicants submit evidence that they argue rebuts Lewis’ claims regarding premature transfer of control, failure of Jireh to comply with the Act’s foreign ownership limits, violations of the Rules and Garcia’s character qualifications. Applicants assert that, at bottom, Lewis filed his Objection in an effort “to employ the FCC to vindicate a private contractual dispute, and/or to seek some retribution against the Trustee and Jireh in that connection.”<sup>8</sup> Applicants request that we reject Lewis’ Objection and grant their Assignment Application.

6. In his Reply, Lewis acknowledges the existence of certain procedural defects and asks the Commission “to accept all submissions on substance only and forgive form.”<sup>9</sup> Lewis goes on to repeat many of the assertions and arguments made in his Objection. Lewis also makes new allegations that appear intended to demonstrate that Jireh is not financially qualified to be a Commission licensee.

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<sup>4</sup> 47 U.S.C. § 310; 47 C.F.R. § 73.3540.

<sup>5</sup> See *Universal Broadcasting, Inc., Debtor*, Appointment of Interim Trustee and Trustee and Designation of Required Bond, Case No. 07-50984-gwz (Bankr. D.Nev. Dec. 12, 2007).

<sup>6</sup> FCC, Public Notice, Broadcast Actions, Report No. 46859 (Nov. 7, 2008), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-286588A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-286588A1.pdf).

<sup>7</sup> Opposition at 4-6.

<sup>8</sup> *Id.* at 4-5.

<sup>9</sup> Reply at 3.

### III. DISCUSSION

7. **Procedural Issues. Standing.** Section 309(d)(1) of the Act provides that only a “party in interest” may file a petition to deny a proposed assignment.”<sup>10</sup> The Commission accords party in interest status to a petitioner if grant of the application would result in, or be reasonably likely to result in, some injury of a direct, tangible or substantial nature.<sup>11</sup> The Commission has long recognized that a competing broadcaster qualifies as a party in interest. In addition, the Commission accords party in interest status to a petitioner who demonstrates either that he resides in the service area of the station that is the subject of the petition or that he listens to or views the station regularly and that such listening or viewing is not the result of transient contacts with the station.<sup>12</sup>

8. Applicants assert that Lewis lacks standing.<sup>13</sup> Specifically, Applicants characterize Lewis’ complaint as related to the failure of Jireh to pay him for his services.<sup>14</sup> Applicants argue that grant of the Application will not in any way harm Lewis and that, conversely, denial of the Application will not redress Lewis’ alleged injury.<sup>15</sup> Lewis himself acknowledges that standing “was, initially, not addressed properly” in the Objection<sup>16</sup> and does not dispute Applicants argument on this point.<sup>17</sup>

9. Lewis, however, does seek to demonstrate standing in his Reply. He argues that he is a member of the public “with an interest in the FCC Rules and Regulations being properly observed for the benefit of the public at large.”<sup>18</sup> The Commission does permit members of the public to “establish standing as a party in interest by demonstrating that they are either (1) a resident of the station’s service area or (2) a listener or viewer whose contact with the station is not transient.”<sup>19</sup> As Applicants note, though, Lewis resides in Acworth, Georgia, and has provided no evidence that he is capable of receiving the Station’s full offerings on a regular basis.<sup>20</sup> Thus, Lewis cannot establish standing on this basis.

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<sup>10</sup> 47 U.S.C. § 309(d)(1).

<sup>11</sup> See, e.g., *Pinelands, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 6058, 6063 (1992); *Telesis Corp.*, Memorandum Opinion and Order, 68 FCC2d 696 (1978).

<sup>12</sup> See *Sagittarius Broadcasting Corp.*, Memorandum Opinion and Order, 18 FCC Rcd 22551, 22554-5 (2003) (“*Sagittarius*”); *CHET-5 Broadcasting of Poughkeepsie, Inc.*, Memorandum Opinion and Order, 14 FCC Rcd 13041 (1999).

<sup>13</sup> Opposition at i, 2-4.

<sup>14</sup> *Id.* at 2. It is undisputed that Jireh hired Lewis to assist in returning the Station to air. Objection at 10; Opposition at 6.

<sup>15</sup> *Id.* at i, 3.

<sup>16</sup> Reply at 3. We note that the Objection failed to make any “specific allegations of fact sufficient to show that petitioner is a party in interest.” See 47 U.S.C. § 309(d)(1). In addition, as Applicants point out, Opposition at i, the Objection necessarily also lacked the supporting affidavit required by the Act.

<sup>17</sup> Reply at 2.

<sup>18</sup> Reply at 2. As Applicants note, Opposition at 3-4, Lewis does not claim an affiliation with an organization representing a resident of the Station’s service area and thus cannot claim standing on this ground.

<sup>19</sup> *Sagittarius*, 18 FCC Rcd at 22554-55. See also *Vermont Public Radio*, Letter, 22 FCC Rcd 18328, 18330, n.2 (MB 2007).

<sup>20</sup> Opposition at 3.

Lewis also argues that he is a member of the broadcast community “with an interest in the FCC Rules and Regulations being properly observed for the benefit of the public at large” and that he has “an investment and engineering interest in at least two future broadcast facilities in the Reno market and in both radio and television facilities.”<sup>21</sup> However, his vague assertions about membership in the “broadcast community” and investment and engineering interests in unspecified broadcast facilities are insufficient to confer standing.<sup>22</sup>

10. We find that Lewis lacks standing to file a petition to deny the Assignment Application. Accordingly, we will dismiss Lewis’ Objection as a petition to deny. We will, however, treat the Objection as an informal objection pursuant to Section 73.3587 of the Rules.<sup>23</sup>

11. *Other Procedural Defects.* Applicants allege that Lewis’ pleading contains additional procedural defects.<sup>24</sup> We agree. While Lewis asserts that “[a]ll Commission copies were signed,”<sup>25</sup> the pleading received by the Commission is not signed as required by Section 1.52 of the Rules.<sup>26</sup> Moreover, Lewis fails to provide an affidavit to support the allegations made in the Petition, as required by Section 309(d)(1) of the Act.<sup>27</sup> The Commission cannot waive this statutory requirement.<sup>28</sup> Accordingly, for

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<sup>21</sup> Reply at 2, 3.

<sup>22</sup> Moreover, to the extent Lewis relies on his provision of engineering services to broadcast stations in the Reno market, this is insufficient to provide competitor standing. In addition, to the extent that Lewis relies on his interests in “future broadcast facilities,” we note that standing to file a petition to deny “as an aggrieved competitor, assumes an [sic] actual state of competition, not the future possibility thereof.” See *Sevier Valley Broadcasting, Inc.*, Memorandum Opinion and Order, 10 FCC Rcd 9795, 9696 (1995); *Syracuse Channel 62, Inc.*, Memorandum Opinion and Order, 60 RR 2d 1161, 1165 (1986); *WIBF Broadcasting Co.*, Memorandum Opinion and Order, 17 FCC 2d 876 (1969); *Intermart Broadcasting Twin Falls, Inc.*, Letter, 23 FCC Rcd 11910, 11911 (MB 2008).

<sup>23</sup> 47 C.F.R. § 73.3587.

<sup>24</sup> Opposition at 4 n. 4. Applicants also state that, “[a]lthough the assignment application clearly identified the undersigned counsel as attorneys for both the Trustee and Jireh, no copy of the Lewis Request was served upon designated counsel.” Opposition at 4. In response, Lewis states that “[a]ll Commission copies were signed with photocopies of certified mail receipts.” Reply at 3. Given the other procedural defects discussed herein, we find that we need not reach the question of whether Lewis properly served his Objection.

<sup>25</sup> Reply at 3.

<sup>26</sup> 47 C.F.R. § 1.52. The Commission’s copy of the Objection contains signature and date lines but these are not completed.

<sup>27</sup> 47 U.S.C. § 309(d)(1) (requiring that a petition to deny “contain specific allegations of fact sufficient to show ... that a grant of the application would be prima facie inconsistent with” the standards for grant of the application at issue and requiring that such allegations, except for those of which official notice may be taken “be supported by affidavit of a person or persons with personal knowledge thereof”). While the Objection includes a document entitled “Petitioner’s Timeline to Establish First-Hand Knowledge of KQLO Events” that Lewis may have intended to fulfill this requirement, the document is unsigned and unverified. Moreover, the Reply, while signed, also contains no supporting affidavit. Section 1.52 of the Rules specifically requires a *pro se* petitioner, like Lewis, to “submit a declaration made before a duly authorized officer, e.g. a notary public, stating that the contents of the petition are true.” *San Francisco Unified School District*, Hearing Designation Order and Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 13326, 13328 n. 13. (2004). See also *Harrea Broadcasters, Inc.*, Memorandum Opinion and Order, 52 F.C.C.2d 998, 1001 (1975) (“Verification is a declaration, made before any officer authorized by law to administer oaths (e.g., a notary public), that the contents of the petition are true.”).

<sup>28</sup> *Finer Living, Inc.*, Memorandum Opinion and Order, 5 FCC 2d 984, 987 (1966).

these reasons too, we dismiss Lewis' Objection as a petition to deny. As noted above, we will, however, treat the pleading as an informal objection pursuant to Section 73.3587 of the Rules.<sup>29</sup>

12. **Substantive Issues.** Section 310(d) of the Act<sup>30</sup> requires the Commission to make a determination whether the proposed assignment of the Station's license to Jireh would be in the public interest. Like petitions to deny, informal objections must provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact calling for further inquiry regarding whether grant of the Assignment Application would be *prima facie* inconsistent with Section 309(a) of the Act.<sup>31</sup> Section 309(a) provides that we are to grant an application if, upon consideration of the application and pleadings and other such matters of which we may officially take notice, we find that the public interest, convenience, and necessity will be served by the granting of such application. If, however, the applicant fails to meet that standard, the Commission may deny the application after notice and opportunity for a hearing under Section 309(e) of the Act.

13. As noted above, Lewis alleges that an unauthorized transfer of control from Savage to Jireh has occurred, that Jireh does not comply with the limits on foreign ownership set forth in Section 310(b) of the Act, that there are numerous ongoing violations of the Rules concerning operation of the Station, and that Garcia lacks the character qualifications required of a Commission licensee. We find that, for the most part, Lewis allegations are either unsubstantiated or specifically rebutted by Applicants.<sup>32</sup> We, however, do find that Savage has engaged in a premature transfer of control to Jireh in

<sup>29</sup> 47 C.F.R. § 73.3587. We note that, like petitions to deny, informal objections must be signed. As discussed, Lewis' pleading was not signed. Nevertheless, we waive that requirement, and consider Lewis' Objection on its merits. See 47 C.F.R. § 1.3.

<sup>30</sup> 47 U.S.C. § 310(d).

<sup>31</sup> 47 U.S.C. § 309(a). See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990), *aff'd sub nom. Garden State Broadcasting L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993), *rehearing denied* (Sept. 10, 1993); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986) (informal objections, like petitions to deny, must contain adequate and specific factual allegations sufficient to warrant the relief requested).

<sup>32</sup> Specifically, we find that Applicants' certification of compliance with Section 310(b) of the Act in the Assignment Application and submission of additional evidence demonstrating that Nien Lun Chun, 80 percent owner of Jireh, is a U.S. citizen more than rebut Lewis' unsubstantiated allegation that Chun may not be a U.S. citizen and therefore Jireh may not comply with Section 310(b) of the Act. See Objection at 5-6; Reply at 7; Opposition at 8-9, Exh. D. In addition, we agree with the Applicants that, although Garcia is a citizen of Mexico, his status as an officer, director and employee of Jireh does not implicate the foreign ownership limits. Indeed, Section 403(k) of the Telecommunications Act of 1996 ("1996 Act") explicitly amended Sections 310(b)(3) and (4) of the Act to remove the restrictions against corporate licensees having alien officers or directors. See Section 403(k) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). Moreover, even prior to the 1996 Act, Section 310(b) did not restrict a licensee's ability to employ aliens. After reviewing the record, we also conclude that Lewis' allegations of Rule violations are either unsubstantiated or rebutted by Applicants' Opposition. As a result, we will not further consider Lewis allegations that, at the time he ceased work at the Station, the Station was operating in violation of Sections 11.1-11.61 (EAS), 73.49 (fencing), 73.1125 (main studio), 73.1230 (posting of authorizations), 73.1350(b) (remote control of transmitter), 73.1745 (unauthorized operation), 73.1820 (station logs), 73.1870 (chief operator) and 73.3526 (local public inspection file) of the Rules. See Objection at 2. See also 47 C.F.R. §§ 11.1-11.61, 73.49, 73.1125, 73.1230, 73.1350(b), 73.1745, 73.1820, 73.1870 & 73.3526. Finally, we note that Lewis also makes a general assertion that Jireh fails to serve the public interest because it "has not taken into consideration the public's programming interests." Objection at 2. To the extent that this represents a complaint about the Station's format, we note that the Commission does not regulate

(continued....)



violation of Section 310(d) of the Act and Section 73.3540 of the Rules. We determine that forfeiture is the appropriate sanction for this violation. Taking into account the specific circumstances here and the fact that Savage and Jireh brought a station that had been silent for nearly a year back on air, we conclude that Lewis has presented no substantial and material question of fact calling for further inquiry and requiring resolution in a hearing regarding the Assignment Application. Additionally, we find that the Assignment Application complies with all pertinent statutory and regulatory requirements and that its grant would further the public interest, convenience, and necessity. We will grant the Assignment Application below.

14. *Unauthorized Transfer of Control.* In determining whether there has been an unauthorized transfer of control, the Commission employs a tripartite, fact-based test for control within the meaning of Section 310(d) of the Act.<sup>33</sup> Specifically, the Commission looks to whether a licensee continues to have ultimate control over the station, including its programming, personnel, and finances.<sup>34</sup> While Lewis argues that an unauthorized transfer of control occurred when Savage “entered into an LMA” with Jireh,<sup>35</sup> the Commission consistently has found that a licensee’s participation in an LMA does not *per se* constitute an unauthorized transfer of control or a violation of the Act or any Rule or Commission policy.<sup>36</sup> Rather, the Commission examines whether the agreement vests a disproportionate degree of control in the broker or whether the licensee otherwise has abdicated ultimate control over the station.<sup>37</sup>

15. We find that, on its face, the LMA generally complies with the Commission’s requirements. For instance, Section 25 provides that Savage “will at all times remain in ultimate control of the Station’s programming, employees and finances.”<sup>38</sup> Sections 5 and 8 provide Savage with ultimate control over programming decisions at the Station while Section 6 provides that Savage is “ultimately responsible for the general and technical operation and maintenance of the Station’s studio and transmitter equipment.”<sup>39</sup> Section 5 also states that Savage “shall have full authority and ultimate

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programming formats, *Changes in the Entertainment Formats of Broadcast Stations*, Memorandum Opinion and Order, 66 FCC 2d 78 (1977), *rev’d sub nom. WNCN Listeners Guild v. FCC*, 610 F.2d 838 (D.C. Cir. 1979), *rev’d*, 450 U.S. 582 (1981), and that phrasing of a format issue in public interest language is not sufficient to alter this policy. See, e.g., *College of Staten Island*, Letter, 22 FCC Rcd 4890, 4894 (MB 2007).

<sup>33</sup> See *Ingles*, Memorandum Opinion and Order, 23 FCC Rcd 8815, 8820 n. 32 (2008). See also, *WGPR, Inc.*, Memorandum Opinion and Order, 10 FCC Rcd 8140, 8142-46 (1995) (“*WGPR*”), *vacated on other grounds sub nom. Serafin v. F.C.C.*, 149 F.3d 1213 (D.C. Cir. 1998); *Choctaw Broadcasting Corporation*, Memorandum Opinion and Order, 12 FCC Rcd 8534, 8538-39 (1997).

<sup>34</sup> See, e.g., *Radio Moultrie, Inc.*, Order to Show Cause and Notice of Opportunity for Hearing, 17 FCC Rcd 24304, 24306 (2002) (“*Radio Moultrie*”).

<sup>35</sup> Objection at 1.

<sup>36</sup> See *WGPR*, 10 FCC Rcd at 8141; *Roy R. Russo, Esq.*, Letter Decision, 5 FCC Rcd 7586 (OMB 1990); *Joseph A. Belisle, Esq.*, Letter Decision, 5 FCC Rcd 7585 (OMB 1990); *Radio Moultrie*, 17 FCC Rcd at 24306.

<sup>37</sup> *American Music Radio*, Memorandum Opinion and Order, 10 FCC Rcd 8769, 8771 (1995) (“The existence of a time brokerage or local marketing agreement will not constitute an unauthorized transfer of control under Section 310(d) of the Act unless the contract vests a disproportionate degree of control in the broker.”). See also, *Solar Broadcasting Company, Inc.*, Memorandum Opinion and Order, 17 FCC Rcd 5467, 5488-89 (2002).

<sup>38</sup> Application, Attach. 15 § 25.

<sup>39</sup> Application, Attach. 15 §§ 5, 6, 8.

responsibility, power and control over the operation of the Station and over all persons working at the Station” and makes Savage responsible for providing a meaningful management and staff presence at the Station.<sup>40</sup> Finally, for the most part, Section 9 makes Savage responsible for payment of the Station’s expenses, excluding those directly attributable to Jireh’s programming of the Station.<sup>41</sup>

16. We do find, however, that two specific provisions in the LMA do not comply with the Commission’s requirements. First, Section 12.2 specifies that, if Savage preempted or refused to broadcast more than ten percent of the Programming presented to her for broadcast in any month during the Term, she could be considered in default.<sup>42</sup> This provision undermines Savage’s control of programming by placing a cap on the amount of programming she may preempt or refuse to air.<sup>43</sup> As such, it directly conflicts with the requirement that the licensee retain ultimate control over a station’s programming. We find this provision to be in conflict with the Act and our Rules and unenforceable.<sup>44</sup> Second, Section 6 makes Jireh responsible for “all utilities” during the Term.<sup>45</sup> This directly conflicts with Commission precedent requiring licensees who “engage in time brokerage agreements ... [to] remain responsible for their own obligations to programmers, *utility companies*, and other operational matters.”<sup>46</sup> Thus, we require the Applicants to ensure that, during the entire term of the LMA (*i.e.*, on a going forward and retroactive basis), Jireh is responsible only for the utilities used in providing its programming and Savage is responsible for the remainder of any utilities.

17. We also find that Lewis has made a *prima facie* case that, in practice, Savage has failed to retain ultimate control over certain aspects of the Station’s operation. Specifically, Lewis alleges that Savage failed “to install her own manager and other personnel to supervise the operation” of the Station<sup>47</sup>

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<sup>40</sup> Application, Attach. 15 § 6.

<sup>41</sup> Application, Attach. 15 § 9.

<sup>42</sup> Application, Attach. 15 § 12.2.

<sup>43</sup> *Cf. Manahawkin Communications Corp.*, Memorandum Opinion and Order, 17 FCC Rcd 342, 348 (2001) (approving time brokerage agreement where licensee retained the unfettered right to preempt programming it found to be unsuitable for broadcast or the broadcast of which it believed would be contrary to the public interest); *Roy M. Speer*, Memorandum Opinion and Order and Notice of Apparent Liability, 11 FCC Rcd 18393, 18418 (1996) (subsequent history omitted) (network affiliation agreement approved where licensee was functionally endowed with veto power over programming with no resultant penalty).

<sup>44</sup> 47 U.S.C. § 310(d); 47 C.F.R. § 73.3540.

<sup>45</sup> Application, Attach. 15 § 6.

<sup>46</sup> *WGPR*, 10 FCC Rcd at 8143 (emphasis added).

<sup>47</sup> Objection at 1; Reply at 5-6. In his Reply, Lewis speculates that, “[h]ad [Trustee] employed a properly qualified radio professional with an understanding of the business and broadcast law to oversee the sale and transfer of the license, most if not all problems suffered by both [Trustee] and [Jireh] could have been resolved and [Jireh] would be in a much better position to operate the station profitably.” Reply at 6. This claim is both irrelevant and speculative. We do not address it further. In a similar vein, Lewis discusses Jireh’s alleged failure “to obtain the services of a competent RF engineer to complete the work remaining and bring the operation into compliance.” Objection at 12. However, Lewis does not specifically assert that this violates any provision of the Act or the Commission’s rules. Moreover, Lewis grounds this assertion in hearsay. *Id.* We find that we need not address whether to afford this hearsay any weight because we find Applicants have rebutted Lewis’ claim. *See* Opposition at 10-11, Exh. C (Garcia Decl.).

and “did not supervise the rebuild” of the Station during the times he worked at the Station.”<sup>48</sup> In addition, Lewis alleges that Savage did not maintain ultimate control over the Station’s finances, stating “[s]trictly speaking, Trustee Savage should have had financial control of the station during the LMA period.”<sup>49</sup> Finally, Lewis asserts that he was informed by Savage that she had “no further interest” in the Station.<sup>50</sup>

18. In response, Applicants concede that, “[d]uring the two to three week period that Lewis worked on the KQLO facilities, his primary contact was Garcia.”<sup>51</sup> Applicants argue that “[n]othing in the Commission’s rules or cases requires a licensee to serve as an on-site superintendent with regard to a contract engineer’s repair, rebuilding, and relocation of technical equipment”<sup>52</sup> and that this does not prove “any improper abdication by Savage of her duties as a Commission licensee.”<sup>53</sup> We agree. The Commission permits licensees “to delegate day-to-day operations relating to the areas of programming, personnel, and finances, as long as they continue to set the policies guiding those operations.”<sup>54</sup> This alone would not justify a finding that an unauthorized transfer of control occurred. However, Applicants essentially concede that Savage failed to maintain sufficient control over the Station with respect to personnel issues by failing to rebut Lewis’ other allegations. Applicants merely skirt the personnel issue by stating that Savage “has remained in frequent contact with Garcia during the construction of the

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<sup>48</sup> Objection at 3. Lewis speculates that this lack of supervision by Savage continued “after that time.” Given the speculative nature of this claim, we do not address it further. Moreover, along these lines, Lewis states that he expected Savage to have “at least a passing interest in what [Jireh] was reporting to her regarding missing and malfunctioning equipment.” Reply at 6. However, according to Lewis, Savage “made no known effort to contact [him] to verify and/or confirm what [Jireh] was communicating about the condition of her property and license.” *Id.* We find nothing troubling about Savage’s apparent delegation of day-to-day operations. We similarly are untroubled by Lewis’ allegation that he contacted Savage about engineering work for the Station but it was Garcia who returned Lewis’ call. *See* Objection, Timeline at 1.

<sup>49</sup> Objection at 4. Lewis also indicates and Applicants acknowledge that the Station required a new transmitter. Objection at 5; Opposition at 11. By Lewis’ account, Garcia negotiated the contract for purchase of the new transmitter and sent a bank check with partial payment. Objection, Timeline at 5. Lewis gives no indication that Garcia discussed his actions with Savage. *Id.* We note that, while Garcia acknowledges that he entered into a contract to buy a replacement transmitter, Opposition, Exh. C (Garcia Decl.), he too does not indicate whether he discussed his purchase with or sought approval for his purchase from Savage. In a similar vein, Lewis also states that Garcia sold a piece of station equipment to his associate. Objection, Timeline at 10. Lewis acknowledges that he does not know whether Garcia was authorized to do this but then states that Garcia signed a bill of sale that specified that he was allowed to dispose of the equipment. *Id.* We note that it is unclear whether Garcia had the authority to take these actions. If Garcia did lack such authority, we find that these actions too would support our finding. However, given the other evidence before us, we do not and need not address these particular allegations here.

<sup>50</sup> *Id.* at 3. We note that Lewis admits that Jireh sought and received Savage’s authorization “to move and use equipment” and “to transmit from the existing transmitter location.” *Id.* This indicates some involvement on Savage’s part. However, despite this, we find that Lewis’ other allegations make out a *prima facie* case that Savage did not retain sufficient control over the Station with respect to personnel or finances.

<sup>51</sup> Opposition at 7.

<sup>52</sup> *Id.* at 7.

<sup>53</sup> *Id.*

<sup>54</sup> *See Southwest Texas Public Broadcasting Council*, Letter, 85 FCC 2d 713, 715 (1981) (“*Southwest Texas*”); *The Alabama Educational Television Commission*, Memorandum Opinion and Order, 33 FCC 2d 495, 508 (1972) (“*Alabama Educational Television*”); *Radio Moultrie*, 17 FCC Rcd at 24306.



facilities,”<sup>55</sup> that Savage and Garcia have “met several times,” that Garcia “has stayed in contact with [the Trustee’s] office regarding the planned operations for KQLO, and the status and move of the station’s equipment,” and that Savage’s “office is located within the service area of KQLO.”<sup>56</sup> We find that Applicants have not rebutted the *prima facie* case made by Lewis that Savage failed to maintain ultimate control over the Station with respect to personnel.

19. In contrast, we find that there is insufficient evidence in the record to demonstrate that Savage failed to maintain ultimate control of the Station’s finances. Applicants argue that “[n]o Commission rule requires the Trustee to acknowledge, let alone ‘assist,’ Lewis in his private contractual dispute with Jireh.”<sup>57</sup> We agree. Applicants also provide a sworn declaration from Savage that contradicts Lewis’ account of Savage’s response to his request for assistance.<sup>58</sup> In her declaration, Savage indicates that she told Lewis not that she had no further interest in the Station but that “she would not become involved in the disagreement that had arisen between Lewis and Jireh over the terms of Lewis’ employment by Jireh.”<sup>59</sup> Applicants argue that, because Lewis’ arrangement was with Jireh – not Savage, Savage’s position was proper.<sup>60</sup> We agree. We also find that Savage’s sworn declaration more than rebuts Lewis’ unsworn assertion that she stated she had no further interest in the Station.

20. Despite our finding with respect to the Station’s finances, we find that there has been an unauthorized transfer of control. As discussed above, we find that Savage did not maintain ultimate control over the Station with regard to personnel.<sup>61</sup> Indeed, it appears that, contrary to the LMA, Savage did not hire any employees to staff the Station or supervise the activities of Jireh. While the Commission permits a licensee to delegate certain day-to-day functions, the licensee must continue to set the policies governing these functions.<sup>62</sup> Moreover, even where a licensee has entered into an LMA, it must maintain a meaningful management and staff presence at its main studio.<sup>63</sup> We find that Savage abdicated too much authority to and provided too little supervision of Jireh.

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<sup>55</sup> Opposition at 7, Exh. B (Savage Decl.). Applicants argue that Lewis acknowledges this in his Objection when he states that “work on the new studio was delayed several days while Jireh sought permission from [Savage] to remove the old studio equipment and install it at the new studio.” *Id.* at 7-8, *quoting* Objection, Timeline at 3-4. As noted above, while this indicates some measure of involvement with the Station, it alone does not rebut Lewis’ allegations that Savage failed to retain ultimate control over the Station’s personnel or finances.

<sup>56</sup> Opposition, Exh. B (Savage Decl.).

<sup>57</sup> *Id.* at 8.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.* at 8, Exh. B (Savage Decl.).

<sup>60</sup> *Id.* at 8.

<sup>61</sup> A broadcast entity’s surrender of control over any one of these indicia to another is sufficient to find that the other entity has *de facto* control. See, e.g., *Hicks Broadcasting of Indiana, LLC*, Hearing Designation Order, 13 FCC Rcd 10662, 10677 (1998); *Clear Channel Broadcasting Licenses Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, \_\_ FCC Rcd \_\_, 2009 WL 4026639, \*11 (MB 2009).

<sup>62</sup> See *Southwest Texas*, 85 FCC 2d at 715; *Alabama Educational Television*, 33 FCC 2d at 508; *Radio Moultrie*, 17 FCC Rcd at 24306.

<sup>63</sup> *Birach Broadcasting Corp.*, Notice of Apparent Liability for Forfeiture and Order, \_\_ FCC Rcd \_\_, 2010 FCC LEXIS 1652 (EB 2010).

21. While we applaud Savage and Jireh for working together to “return[] a formerly defunct station to operation” and acknowledge that this has been and continues to be “an immense challenge,”<sup>64</sup> we cannot condone the unauthorized transfer of control that took place here. Accordingly, as discussed further below, we propose a forfeiture for this violation of Section 310(d) of the Act and Section 73.3540 of the Rules.<sup>65</sup>

22. *Character Qualifications.* Lewis questions whether Jireh, particularly Garcia, possesses the requisite character qualifications to be a Commission licensee.<sup>66</sup> Lewis raises various allegations of non-FCC related misconduct that he asserts demonstrate “flaws in Garcia’s character.”<sup>67</sup> However, the Commission generally considers only three types of adjudicated, non-FCC related misconduct: felony convictions; fraudulent misrepresentations to governmental units; and violations of antitrust or other laws protecting competition.<sup>68</sup> Lewis’ claims do not fall into any of these enumerated categories nor, as noted, do they involve adjudicated misconduct. As a result, we will not consider them further.

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<sup>64</sup> Opposition at 7.

<sup>65</sup> See *Macau Traders, Inc.*, Memorandum Opinion and Order and Forfeiture Order, 13 FCC Rcd 228 (MMB 1997) (affirming issuance of notice of apparent liability for forfeiture and imposing forfeiture for unauthorized transfer of control where Chapter 7 Trustee ceded control to prospective buyer). We note that the situation here is not analogous to other cases involving Chapter 7 Trustees where admonishment was deemed the appropriate sanction. Unlike in this case and *Macau Traders*, in each of these other cases, the Commission based its decision to admonish in large part on the fact that the violator was no longer associated with the station. *Arlie L. Davison and Associates Inc.*, Memorandum Opinion and Order, 11 FCC Rcd 15382 (1996) (“*Davison and Associates*”); *Diamond Broadcasting of California, Inc.*, Memorandum Opinion and Order, 11 FCC Rcd 7388, 7390 (1996) (“*Diamond Broadcasting*”); *Dennis Elam, Trustee*, Memorandum Opinion and Order, 11 FCC Rcd 1137, 1137 (1996) (“*Elam*”).

<sup>66</sup> Objection at 10. Lewis also questions whether Jireh possesses the financial qualifications to be a Commission licensee. However, he does so for the first time in his Reply. Reply at 12-13. We note that Lewis’ Reply should have been “limited to matters raised” in Applicants’ Opposition. See 47 C.F.R. § 1.45(c). See also, *Ponce Television Corporation*, Memorandum Opinion and Order, 1 FCC Rcd 1167 n.42 (1986). Thus, we do not consider this allegation further.

<sup>67</sup> Lewis also repeatedly and at length discusses his dispute with Jireh over payment for his services. Objection at 10-11. We note that the Commission has consistently held that private disputes are beyond its regulatory jurisdiction and must be resolved in a local court of competent jurisdiction. See *John R. Kingsbury*, Memorandum Opinion and Order, 71 FCC 2d 1173 (1979); citing *Transcontinent Television Corp.*, Memorandum Opinion and Order, 21 RR 945 (1961).

<sup>68</sup> See *Policy Regarding Character Qualifications in Broadcast Licensing*, Report, Order, and Policy Statement, 102 FCC 2d 1179, 1209-10 (1986) (“*Character Policy Statement*”), modified, Policy Statement and Order, 5 FCC Rcd 3252 (1990), recon. granted in part, Memorandum Opinion and Order, 6 FCC Rcd 3448 (1991), modified in part, Memorandum Opinion and Order, 7 FCC Rcd 6564 (1992). The Commission did create an exception to the general rule that non-Commission related misconduct must result in an adjudication before the Commission will consider it. In adopting the *Character Policy Statement*, the Commission acknowledged “that there may be circumstances in which an applicant has engaged in nonbroadcast misconduct so egregious as to shock the conscience and evoke almost universal disapprobation.” In such cases, it indicated, the misconduct might, of its own nature, constitute *prima facie* evidence that the applicant lacks the traits of reliability and/or truthfulness necessary to be a licensee and might be a matter of Commission concern even prior to adjudication by another body. *Character Policy Statement*, 102 FCC 2d at 1205 n.60. We do not believe that the alleged unadjudicated misconduct herein, even if true, “shocks the conscience.” Accordingly, it would not fit within this exception to the adjudication requirement.

23. Lewis also makes a general allegation that “willful disregard of Commission Rules and Regulations does not speak well of [Garcia’s] character.” As noted above, we conclude that Lewis’ allegations of Rule violations are either unsubstantiated or rebutted by Applicants demonstration that the Station now is in – or working toward – compliance with each of these Rules. Accordingly, we find that Lewis’ allegations do not raise a substantial and material question of fact concerning Jireh’s character qualifications.

24. *Proposed Forfeiture.* This NAL is issued pursuant to Section 503(b)(1)(B) of the Act. Under that provision, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.<sup>69</sup> Section 312(f)(1) of the Act defines willful as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.<sup>70</sup> The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,<sup>71</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>72</sup>

25. The Commission’s *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules establish base forfeiture amounts of \$8,000 for unauthorized transfer of control.<sup>73</sup> In determining the appropriate forfeiture amount, we must consider the factors enumerated in Section 503(b)(2)(D) of the Act, including “the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”<sup>74</sup>

26. In this case, we find that the circumstances in which the violation occurred – a bankruptcy trustee handed a station silent for almost a year and by all accounts in terrible technical shape has against all odds, with the assistance of Jireh, gotten the station back on the air and providing service to the public – support a reduction in the forfeiture amount. We also note that imposing a higher forfeiture would only harm innocent creditors of the bankrupt former licensee and serve no public interest purpose.<sup>75</sup> Thus, we propose a forfeiture of \$4,000.

#### IV. ORDERING CLAUSES

27. IT IS ORDERED, that Steven Lewis’ August 26, 2009, petition to deny IS DISMISSED, and, when treated as an informal objection, IS GRANTED in part and IS DENIED in all other respects.

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<sup>69</sup> 47 U.S.C. § 503(b)(1)(B). See also 47 C.F.R. § 1.80(a)(1).

<sup>70</sup> 47 U.S.C. § 312(f)(1).

<sup>71</sup> See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

<sup>72</sup> See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Red 4387, 4388 (1991).

<sup>73</sup> See *Forfeiture Policy Statement*, 12 FCC Red at 17113-15; 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section I.

<sup>74</sup> 47 U.S.C. § 503(b)(2)(D); see also *Forfeiture Policy Statement*, 12 FCC Red at 17100; 47 C.F.R. § 1.80(b)(4).

<sup>75</sup> *Davison and Associates*, 11 FCC Red at 15386-87; *Diamond Broadcasting*, 11 FCC Red at 7390; *Elam, Trustee*, 11 FCC Red at 1137.

28. IT IS FURTHER ORDERED that the Motion for Extension of Time filed by Anabelle Savage, Chapter 7 Trustee, Universal Broadcasting, Inc. and Jireh Media, Inc. on September 3, 2009, IS GRANTED and the Motion to Deny Extension of Time Request filed by Steven Lewis on September 11, 2009, IS DENIED.

29. IT IS FURTHER ORDERED that the application for approval to assign the license for Station KQLO(AM), Sun Valley, Nevada (File No. BAL-20090728ADJ) from Anabelle Savage, Chapter 7 Trustee, Universal Broadcasting, Inc. to Jireh Media, Inc. IS GRANTED.

30. IT IS FURTHER ORDERED, that pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission's Rules, that Anabelle Savage, Chapter 7 Trustee, Universal Broadcasting, Inc. is hereby NOTIFIED of her APPARENT LIABILITY FOR FORFEITURE in the amount of four thousand dollars (\$4,000) for her apparent willful and repeated violation of Section 310(d) of the Communications Act, as amended, and Section 73.3540(a) of the Rules.

31. IT IS FURTHER ORDERED, that pursuant to Section 1.80 of the Commission's Rules, that, within thirty (30) days of the release date of this *NAL*, Anabelle Savage, Chapter 7 Trustee, Universal Broadcasting, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

32. Payment of the proposed forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the *NAL*/Acct. No. and FRN No. referenced in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank--Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If completing the FCC Form 159, enter the *NAL*/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code).

33. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington D.C. 20554, ATTN: Peter H. Doyle, Chief, Audio Division, Media Bureau, and MUST INCLUDE the *NAL*/Acct. No. referenced above.

34. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

35. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>76</sup>

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<sup>76</sup> See 47 C.F.R. § 1.1914.

36. IT IS FURTHER ORDERED that a copy of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Anabelle Savage, Chapter 7 Trustee, Universal Broadcasting, Inc., c/o Belding Harris & Petroni, Ltd., 417 West Plumb Lane, Reno, NV 89509; Jireh Media, Inc., 495 Apple Street, Suite 225, Reno, NV 89502; and to their counsel, Brian M. Madden, Esq., Lerman Senter PLLC, 2000 K Street, NW, Suite 600, Washington, DC 20006; and to Steven Lewis, 995 Fairwood Terrace, NW, Acworth, GA 30101.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle, Chief  
Audio Division  
Media Bureau